

TEXAS GOVERNOR'S COMMITTEE ON PEOPLE WITH DISABILITIES

RECOMMENDATIONS TO THE 88TH LEGISLATURE

The issue of guardianship raises legitimate questions for family members and care givers of persons who may need assistance or guidance in making important decisions. The Governor's Committee on People with Disabilities recommends that the Texas Legislature consider options to ensure the process involves qualified professionals, that the process, if necessary be conducted using remote technology, and that one licensed profession be added as having authority to offer evidence in hearings regarding guardianship.

Guardianship is a legal tool which allows a person to make decisions for another person. It removes the civil rights and privileges of a person by assigning control of their life to someone else. The need for guardianship may come from a person's age, disability or injury. Guardianship provides for the person's care and management of their money while preserving, to the largest extent possible, that person's independence and right to make decisions affecting their life.

A guardianship should be only as restrictive as indicated by the person's actual mental or physical limitations; and as necessary to promote and protect their well-being. For many individuals, guardianship may be an appropriate option, however, per changes in the law in 2015 and 2017, alternatives to guardianship, like supported-decision making agreements, are not only viable solutions but must be considered before guardianship is granted. School districts are required by state and federal law to provide information on all options and avoid bias.

Texas has an opportunity to improve guardianship proceedings including alternatives to guardianship (i.e., supportive decision making agreements) focusing on the development or maintenance of maximum self-reliance and independence for individuals, including presuming they retain capacity to make personal decisions with supports and services. GCPD recommends the 88th Texas Legislature adopt the following policies:

1. ensure the physician completing the Certificate of Medical Evaluation (CME) is qualified to perform the capacity and functioning evaluation;
2. provide the option for the use of remote technology when conducting probate and guardianship proceedings;

3. allow licensed psychologists the authority to offer evidence in restoration and/or modification hearings for individuals with intellectual and developmental disabilities (IDD); and
4. allow for the restoration of rights for individuals who are diagnosed with a mental condition but have sufficient capacity with supports and services.

1. Completion of the Certificate of Medical Evaluation (CME)

The CME form currently used to evaluate proposed wards requires physicians to provide their name, office address and whether or not they are licensed to practice in Texas. To ensure the physician filling out the form is qualified to perform the evaluation, they should provide information on their specific specialty to assure the court that they have the relevant knowledge and experience to conduct the evaluation to be used in the guardianship proceeding.

2. The use of remote technology when conducting probate and guardianship proceedings

The use of remote technology provides potential wards the option of attending their hearing without having to travel to the courthouse.

A court that conducts a guardianship or probate proceeding through remote technology must:

- ensure that the public maintains access to the proceeding;
- establish and make readily available to the parties and the public guidelines regarding the conduct of proceedings through remote technology; and
- in guardianship proceedings, determine that the proposed ward either consents, or does not object, to the use of remote technology.

Proposed wards are encouraged to attend their guardianship hearing in person if possible. If a proposed ward consents or does not object to the use of remote technology, the Court should take measures to ensure all video recordings resulting from the hearing are deleted as soon as practicable after the hearing. Additionally, the only official record of the proceedings shall be the record taken by the court reporter.

3. Allow licensed psychologists the authority to offer evidence in restoration and/or modification hearings for individuals with intellectual and developmental disabilities (IDD)

A psychologist licensed in Texas is allowed to present evidence in a guardianship application. The current statute does not give licensed psychologists the same authority to offer evidence in restoration and/or modification hearings. Licensed psychologists should have the same authority across both types of applications, guardianships and restoration or modifications.